

**LANDSCAPE CONSTRUCTION AND MAINTENANCE
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____ 2015, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the “**DEPARTMENT**” and the **CITY OF ORLANDO**, a municipality of the State of Florida, existing under the Laws of Florida, hereinafter called the “**AGENCY.**”

WITNESSETH

WHEREAS, the **DEPARTMENT** has jurisdiction over and maintains State Road 527, as part of the State Highway System; and

WHEREAS, the **AGENCY** seeks to install and maintain certain landscaping within the right of way of State Road 527, and

WHEREAS, the **DEPARTMENT** agrees that landscaping should be installed and maintained as proposed by **AGENCY**; and

WHEREAS, Rule 14-40.003(3)(c), Florida Administrative Code, requires the parties to enter into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, **AGENCY**, by Resolution No. _____, dated _____, and attached hereto as Exhibit “A,” has accepted said grant and authorized its officers to execute this **AGREEMENT** on its behalf.

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The **AGENCY** hereby agrees to install or cause to be installed landscaping as specified in the Landscape Plan(s) included as Exhibit “B.” Such installation shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time, and the Florida Highway Landscape Guide, which is incorporated into Rule 14-40.003 by reference. The **AGENCY** shall not change or deviate from said plans(s) without written approval of the **DEPARTMENT**. A utility permit applied for and issued by the **DEPARTMENT** is required prior to installation of streetlights shown on the plans
2. The **AGENCY** agrees to maintain the landscaping in accordance with the Landscape Maintenance Plan(s) included as Exhibit “B.” Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003 and the Florida Highway Landscape Guide, as they may be amended from time to time. The **AGENCY**’s responsibility for maintenance

shall be consistent with the requirements of Florida Administrative Code Rule 14-40.003(3)(a)8. The **AGENCY** agrees to maintain the sidewalk in conformance with generally accepted standards of sidewalk maintenance. Additionally, the **AGENCY** agrees to be responsible for maintaining or cause to be maintained the sidewalk on public or private property outside the **DEPARTMENT**'s right of way which adjoins and/or connects with the **DEPARTMENT** sidewalk shown on Exhibit "B." The above named functions to be performed by the **AGENCY** shall be subject to periodic inspections by the **DEPARTMENT**. The **AGENCY** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.

3. All landscape installation and maintenance activities undertaken by **AGENCY** shall be in accordance with the Work Zone Traffic Control Plan included as Exhibit "C" and Rule 14-40.003(5), Florida Administrative Code.
4. If at any time after the **AGENCY** has assumed the landscaping installation or the maintenance responsibility above-mentioned, it shall come to the attention of the **DEPARTMENT** that the limits or a part thereof is not properly installed or maintained pursuant to the terms of this **AGREEMENT**, the District Secretary or his designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the **AGENCY** to place said **AGENCY** on notice thereof. The certified letter shall be sent to the City Engineer, 400 South Orange Avenue, Orlando, FL 32801. Thereafter the **AGENCY** shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the **DEPARTMENT** may at its option, proceed as follows:
 - (a) If installation is not completed in accordance with the plans in paragraph 1, the **DEPARTMENT** may complete the installation, with **DEPARTMENT** or Contractor's personnel, and invoice the **AGENCY** for expenses incurred.
 - (b) If installation has been properly completed or if the **DEPARTMENT** elects not to complete the installation under (a) above, and maintenance by **AGENCY** is not in compliance with paragraphs 2 or 3, the **DEPARTMENT** may take action to maintain the landscaping or existing sidewalk or a part thereof, with **DEPARTMENT** or Contractor's personnel and invoice the **AGENCY** for expenses incurred, or
 - (c) The **DEPARTMENT** may terminate the **AGREEMENT**, in which case the **AGENCY** shall at its own expense and within sixty (60) days after written notice by the **DEPARTMENT**, remove all of the landscaping that the **DEPARTMENT** directs be removed and return the right-of-way to its original condition. The **AGENCY** will own such materials as it removes and the **DEPARTMENT** shall own any materials remaining. The **DEPARTMENT** may, in its discretion, remove, relocate or adjust the landscaping materials, with the **AGENCY** being responsible for the cost of any removal.

Upon **DEPARTMENT** action under one of the above options and upon direction of the **DEPARTMENT**, **AGENCY** shall cease installation and maintenance activities under this **AGREEMENT**.

5. It is understood between the parties hereto that the landscaping covered by this **AGREEMENT** may be removed, relocated or adjusted by the **DEPARTMENT** at any time in the future as determined to be necessary by the **DEPARTMENT** in order that the state road be widened, altered or otherwise changed. The **AGENCY** shall be given sixty (60) calendar days notice to remove said landscaping/hardscape after which time the **DEPARTMENT** may remove the same, with **AGENCY** being responsible for the cost of removal.
6. **AGENCY** may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, **AGENCY** remains responsible for proper performance under this **AGREEMENT** and shall take all steps necessary to ensure that its employees or third parties perform as required under this **AGREEMENT**.
7. The term of this **AGREEMENT** commences upon execution. The **AGENCY** shall notify or cause the Department's Orlando Maintenance Engineer or his designee to be notified a minimum of 48 hours, excluding Saturday, Sunday, and legal holidays, prior to starting work in the right-of-way, unless said Engineer or his designee waives this period in writing. When the Department through said Engineer or his designee issues a Notice to Proceed, the **AGENCY** may proceed with the project.
8. **AGENCY:**
 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **AGENCY** during the term of the contract; and
 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
9. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are no other **AGREEMENTS** and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
10. This **AGREEMENT** may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the **DEPARTMENT**.
11. This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the **AGREEMENT** and Florida law, the laws of Florida shall prevail.

12. Public Entity Crime - A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13. Anti-Discrimination - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

**CITY OF ORLANDO
(AGENCY)**

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Mayor

By: _____
Alan E. Hyman
Director of Traffic Operations

Attest: _____(SEAL)

Clerk

Attest: _____(SEAL)
Norma Mejias
Executive Secretary

Legal Approval

Legal Approval as to Form

Exhibit "A"

RESOLUTION

ATTACHED

Exhibit "B"

LANDSCAPE AND
LANDSCAPE MAINTENANCE PLANS

ATTACHED SHEETS

**THE SEVENS, ORANGE AVENUE STREETScape
HARDSCAPE & LANDSCAPE PLANS
REVISION 6: NOVEMBER 25, 2014**

Table of Contents Sheet

Sheets L1.00, L1.10, L1.20, L1.30, L2.00, L2.10, L2.20, L3.00

Each signed and sealed 11-25-14

Exhibit "C"

WORK ZONE TRAFFIC CONTROL PLANS

ATTACHED SHEETS

**MAINTENANCE OF TRAFFIC
THE SEVENS
Sheet 21B OF 22**